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Mr. KAJIYAMA Hiroshi, Minister of Economy, Trade and Industry of Japan, Ambassador Robert E. Lighthizer, United States Trade Representative, and Mr. Phil Hogan, European Commissioner for Trade, met in Washington, D.C. on 14 January 2020.

On industrial subsidies, the Ministers discussed ways to strengthen existing WTO rules on industrial subsidies and agreed upon the following:

1. The current list of prohibited subsidies provided for in Article 3.1 of the Agreement on Subsidies and Countervailing Measures (ASCM) is insufficient to tackle market and trade distorting subsidization existing in certain jurisdictions. Therefore, new types of unconditionally prohibited subsidies need to be added to the ASCM. These are:

- a. unlimited guarantees;
- b. subsidies to an insolvent or ailing enterprise in the absence of a credible restructuring plan;
- c. subsidies to enterprises unable to obtain long-term financing or investment from independent commercial sources operating in sectors or industries in overcapacity;
- d. certain direct forgiveness of debt.

Ministers agreed to continue working on identifying the scope of prohibitions and additional categories of unconditionally prohibited subsidies.

2. Certain other types of subsidies have such a harmful effect so as to justify a reversal of the burden of proof so that the subsidizing Member must demonstrate that there are no serious negative trade or capacity effects and that there is effective transparency about the subsidy in question. Subsidies having been discussed in this category include, but are not limited to: excessively large subsidies; subsidies that prop up uncompetitive firms and prevent their exit from the market; subsidies creating massive manufacturing capacity, without private commercial participation; and, subsidies that lower input prices domestically in comparison to prices of the same goods when destined for export. If such subsidy is found to exist and the absence of serious negative effect cannot be demonstrated, the subsidizing Member must withdraw the subsidy in question immediately.

Ministers agreed to continue working on the scope of such provisions, and to identify additional instances of harmful subsidization and their scope.

3. The current rules of the ASCM identify in Article 6.3 instances of serious prejudice to the interests of another Member. However, these instances do not refer to situations where the subsidy in question distorts capacity. An additional type of serious prejudice linked to capacity should be therefore added to Article 6.3 ASCM. Further, work will continue on a provision defining the threat of serious prejudice.

4. The current rules of the ASCM do not provide for any incentive for WTO Members to properly notify their subsidies. Therefore, the state-of-play of subsidies notifications is dismal. Hence, a new strong incentive to notify subsidies properly should be added to Article 25 ASCM, rendering prohibited any non-notified subsidies that were counter-notified by another Member, unless the subsidizing Member provides the required information in writing within set timeframes.

5. The current rules of the ASCM are insufficiently prescriptive when it comes to the determination of the proper benchmark for subsidies consisting of the provision of goods or services or purchase of goods by a government in situations where the domestic market of the subsidizing Member is distorted. Therefore, the ASCM should be amended to describe the circumstances in which domestic prices can be rejected and how a proper benchmark can be established, including the use prices outside of the market of the subsidizing Member.

6. The Ministers observed that many subsidies are granted through State Enterprises and discussed the importance of ensuring that these subsidizing entities are captured by the term “public body”. The Ministers agreed that the interpretation of “public body” by the WTO Appellate Body in several reports undermines the effectiveness of WTO subsidy rules. To determine that an entity is a public body, it is not necessary to find that the entity “possesses, exercises or is vested with governmental authority.” The Ministers agreed to continue working on a definition of “public body” on this basis.

On forced technology transfers, the Ministers reaffirmed that technology transfer between firms in different countries is an important part of global trade and investment. Technology transfer that is fair, voluntary and based on market principles can be mutually beneficial for growth and development. They also reaffirmed that when one country engages in forced technology transfer, it deprives other countries of the opportunity to benefit from the fair, voluntary and market-based flow of technology and innovation. These unfair practices are inconsistent with an international trading system based on market principles and undermines growth and development.

The Ministers discussed possible elements of core disciplines that aim to prevent forced technology transfer practices of third countries, the need to reach out to and build consensus with other WTO Members on the need to address forced technology transfer issues and their commitment to effective means to stop harmful forced technology transfer policies and practices, including through export controls, investment review for national security purposes, their respective enforcement tools, and the development of new rules.

The Ministers also took stock of the progress on the discussion and the joint actions on the following items and agreed to continue cooperating on them:

- the importance of market oriented conditions for a free, fair, and mutually advantageous trading system;
- reform of the WTO, to include increasing WTO Member compliance with existing WTO notification obligations and pressing advanced WTO Members claiming developing country status to undertake full commitments in ongoing and future WTO negotiations;
- international rule-making on trade-related aspects of electronic commerce at the WTO; and
- international forums such as the Global Forum on Steel Excess Capacity and the Governments/Authorities’ Meeting on Semiconductors.

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